

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| M2Z Networks, Inc. |) | WT Docket No. 07-16 |
| Application For License And Authority To Provide National Broadband Radio Service In The 2155-2175 MHz Band; |) | |
| |) | |
| and |) | |
| NextWave Broadband Inc. |) | File No. _____ |
| Application For License And Authority To Provide Nationwide Broadband Service In The 2155-2175 MHz Band |) | |
| |) | |

To: Chief, Wireless Telecommunications Bureau

**REPLY TO MOTION TO STRIKE
AND MOTION TO DISMISS**

NextWave Broadband Inc. (“NextWave”), pursuant to Section 1.41 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ submits this Reply to the Consolidated Motion of M2Z Networks, Inc. (“M2Z”) To Strike And Dismiss Petitions To Deny And Alternative Proposals (“Motion to Strike”) and the Consolidated Motion of M2Z Networks, Inc. To Dismiss Alternative Proposals (“Motion to Dismiss”) (collectively, the “Motions”).²

¹ 47 C.F.R. § 1.41.

² Motion of M2Z Networks, Inc. To Strike And Dismiss Petitions To Deny And Alternative Proposals, WT Docket No. 07-16 (filed with the Secretary’s Office on Mar. 29,2007); Consolidated Motion of M2Z Networks, Inc. To Dismiss Alternative Proposals, WT Docket No. 07-16 (filed with the Secretary’s Office on Mar. 29,2007).

These filings amount to informal objections submitted outside the formal procedures established for filings of this kind, and thus should be dismissed.

The Motions' request for dismissal of the NextWave Application³ for a non-exclusive, nationwide license in the 2155-2175 MHz ("2.1 GHz") band are procedurally defective and erroneous. M2Z variously cites Sections 309(d)(1) and 308(a) of the Communications Act of 1934, as amended (the "Act"),⁴ and Sections 1.41 and 1.934 of the Commission's rules⁵ as its bases for filing the Motions, but these sections are inapplicable to the relief requested in the Motions. Specifically, Section 308(a) of the Act and Section 1.934 of the Commission's rules, cited by the Motion to Dismiss, establish parameters for Commission action on its own motion; they do not establish grounds for motions filed by private parties. Section 1.41 of the Commission's rules, cited by both of the Motions, permits informal requests for action "[e]xcept for where formal procedures are required."⁶ Formal procedures for opposing the applications are set forth in Section 309(d) of the Act and implemented under Section 1.939 of the Commission's rules. These procedures permit interested parties to file a petition to deny an application that has been listed in a public notice as accepted for filing. That action has not yet occurred with respect to the NextWave Application and, thus, the Motions are, at best, premature. To the extent the Commission would entertain the Motions or allow them to influence its decision as to whether to accept the NextWave Application for filing, such action would violate NextWave's administrative due process rights as well as the Act itself.

³ NextWave Broadband Inc., Application For License And Authority To Provide Nationwide Broadband Service In The 2155-2175 MHz Band, WT Docket No. 07-16 (filed on March 2, 2007) ("NextWave Application").

⁴ 47 U.S.C. §§ 309(d)(1) and 308(a).

⁵ 47 C.F.R. §§ 1.41 and 1.934.

⁶ 47 C.F.R. § 1.41.

Lacking a proper procedural avenue to lodge its Motions, M2Z attempts to conjure one up by arguing that NextWave's Application should be treated as a petition to deny because, according to M2Z, it "attack[s] the merits" of M2Z's above-captioned 2.1 GHz application ("M2Z Application").⁷ The Commission should reject this tactic. NextWave's Application is an application, not a pleading, and the fact that it explains how it is mutually exclusive with the M2Z Application, and how it would otherwise avoid mutual exclusivity through shared use of the 2.1 GHz band, in conformance with Section 309(j)(6)(E) of the Act, does not alter that fact. With respect to M2Z's claim that NextWave's Petition' did not make *apprima facie* showing as to why a grant of M2Z's application would be inconsistent with the public interest, NextWave refers the Commission to pages 6-21 of its Petition, in which NextWave explains why a grant of M2Z's Application is not in the public interest?

NextWave will not debate the substantive merits of the NextWave Application outside of the formally established procedures that govern its processing. However, NextWave wishes to correct some of the false statements and allegations that M2Z made with respect to NextWave. First, M2Z alleges that NextWave "can point to only one concrete achievement in all the many years it has held [its] spectrum licenses."¹⁰ NextWave has only been in existence since April

⁷ Motion to Strike at 7.

⁸ Petition to Deny submitted by NextWave, WT Docket No. 07-16 (filed on Mar. 2, 2007) ("Petition").

⁹ In any event, as explained in NextWave's Petition and Reply, Section 309(j)(6)(E) does not apply to or authorize the grant of **exclusive use** license applications, such as M2Z's Application, as a means to avoid mutual exclusivity. *See* Petition at 4-6; NextWave Broadband Inc., Reply to the Consolidated Opposition of M2Z Networks, Inc. WT Docket No. 07-16 (filed on April 3, 2007) at 3-4 ("Reply"). Accordingly, M2Z's Application cannot be lawfully granted under Section 309(j)(1) of the Act in the presence of mutually exclusive applications and the obvious demand for the 2.1 GHz band, and the public interest aspects of M2Z's Application are an entirely moot consideration.

¹⁰ Motion to Dismiss at 59-60.

2005 – not “more than a decade,” as **M2Z** alleges.¹¹ Within that limited time frame NextWave has aggressively pursued its business model of developing next-generation, WiMAX-based mobile broadband and wireless multimedia products, network components, and various other technologies and services for both the **U.S.** and overseas markets. To implement its business model, NextWave has acquired, through FCC spectrum auction and secondary market processes, a nationwide spectrum footprint covering approximately **247** million persons across the United States.¹² In addition, NextWave has acquired complementary technology companies that are leaders in their field.¹³ Thus, in stark contrast to **M2Z**, in addition to being an FCC licensee, NextWave is an established, publicly-traded corporation with more than 550 full-time employees that is actually engaged in designing and manufacturing telecommunications technology for commercial distribution, and is trialing a network that it designed.

M2Z also erroneously speaks of “NextWave’s persistent need to seek extensions of its construction deadlines.”¹⁴ NextWave has only once sought such an extension (for licenses it had acquired just months prior) – together with every single other **2.3 GHz** Wireless Communications Service (“WCS”) licensee. The WCS licensees collectively sought extension of the **2.3 GHz** WCS construction deadline primarily due to the continued lack of final rules governing Satellite Digital Audio Radio Service terrestrial repeaters.¹⁵ Finally, **M2Z** also

¹¹ *Id.* at 61.

¹² NextWave also controls a significant number of Canadian **2.3 GHz** (WCS) licenses covering large portions of Canada through a Canadian subsidiary, as well as nationwide spectrum in the **3.5 GHz** band in Germany through a majority-controlled joint venture.

¹³ NextWave has acquired PacketVideo, one of the largest independent providers of embedded multimedia software for mobile phones, and GO Networks Inc., a Mountain View, CA-based company that develops advanced mobile WiFi network solutions for commercial and municipal applications.

¹⁴ Motion to Dismiss at 60.

¹⁵ *Consolidated Request of the WCS Coalition For Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14134 (2006).

attempts to cast doubt as to NextWave's ability to finance its operations upon the erroneous notion that NextWave Broadband Inc. (and its parent companies) is related to NextWave Telecom Inc.¹⁶ Aside from having no relevance to NextWave's ability to pursue the NextWave Application,¹⁷ there is no such relation. NextWave Broadband Inc. and its parent companies have no affiliation with and are entirely separate from NextWave Personal Communications Inc., NextWave Power Partners Inc. and NextWave Telecom Inc. In fact, these companies were sold to Verizon Wireless in 2005.¹⁸ As a publicly traded company and an FCC licensee, NextWave's qualifications, financial and otherwise, are a matter of record.

For the foregoing reasons, the Commission should dismiss the Motions filed by M2Z.

Respectfully submitted,

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April 27, 2007

¹⁶ Motion to Dismiss at 60-61.

¹⁷ NextWave's Application proposes a non-exclusive licensing regime under which any party could obtain a license and build out at whatever pace met its business model. Under this scheme, just as in the 3.65 GHz band rules, financial qualifications are a non-issue.

¹⁸ See FCC Public Notice, "Verizon Wireless And Nextwave Seek FCC Consent To Transfer Control Of Broadband PCS Licenses," DA 04-3873, 19 FCC Rcd 23797 (2004). Transfer approved in March 2005. See FCC Public Notice, Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, Action De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Report Number: 2086 (rel. March 2, 2005).

CERTIFICATE OF SERVICE

I, Peter Andros, certify on this 27th day of April, 2007, a copy of the foregoing **REPLY TO MOTION TO STRIKE AND MOTION TO DISMISS** has been served by U.S. Postal Service First Class Mail, postage pre-paid, to the following:

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